Filed 5/18/09 Marriage of Sanchez CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of SANDRA and RALPH SANCHEZ.	B208406 (Los Angeles County Super. Ct. No. BD423330)
SANDRA SANCHEZ, Respondent, v. RALPH SANCHEZ, Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Gretchen W. Taylor, Commissioner. Affirmed.

Barry M. Orlyn; Ralph Sanchez, in pro. per., for Appellant.

Eliseo D.W. Gauna for Respondent.

Ralph Sanchez complains on appeal of various aspects of the dissolution proceeding concerning his marriage to Sandra Sanchez. Specifically, he argues that the dissolution was not timely granted; that the trial court made an unjust community property division; that Sandra[1] should not have been awarded spousal support; that the trial court committed contempt by proceeding with the dissolution proceedings despite Ralph's appeal of the temporary support order that had been entered; and that the contempt proceedings against him were invalid. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Sandra Sanchez filed a petition for legal separation on March 23, 2005; ultimately the marriage was dissolved. On December 4, 2006, the trial court ordered Ralph to pay Sandra $3,680 per month in temporary spousal support beginning November 1, 2006. The court issued a written order to this effect on January 29, 2007. Ralph appealed.[2]

Ralph immediately took the position that the divorce case was stayed by his appeal of the temporary support order, and he refused to comply with the court's orders. Sandra sought to compel him to post an undertaking, and Ralph argued that no undertaking was required to stay the order. On May 24, 2007, the court granted Sandra's motion for an order fixing an appeal bond amount, and set the amount of the appeal bond at $250,000.

On August 14, 2007, the court convened for contempt proceedings against Ralph. The court found that the order to show cause and affidavit of contempt (not included in the appellate record) alleged 10 counts of contempt; it continued the matter until October 16, 2007, and referred Ralph to the Office of the Public Defender to determine his eligibility for their services. The court also re-set the date for trial in the dissolution

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[1] We use the parties' first names for clarity because they have the same surname.

[2] This court upheld the temporary support award. (*In re Marriage of Sanchez* (Apr. 16, 2008, B196921) [nonpub. opn.].)

proceeding for March 2008. In October 2007, the court set a contempt trial for February 14, 2008.

On February 8, 2008, Ralph filed an opposition to the order to show cause re contempt that argued that the trial court lacked jurisdiction to proceed with the contempt trial because he had appealed the temporary support order. The contempt proceedings took place on February 14, 2008. After receiving evidence and testimony, the court concluded that the December 4, 2006 order was lawful; that with respect to four of the contempt charges, Ralph had notice of the order and the ability to comply with it; and that his failure to do so constituted contempt. The court judged Ralph to be in contempt of court on four of 11 charges. Ralph was sentenced on March 10, 2008.

Also on March 10, 2008, trial began in the dissolution matter. No reporter's transcript is in the record because Ralph elected to proceed without one, and he has not lodged any of the trial exhibits. Trial took place March 10 and 11. Ralph declined to present any evidence. The judgment of dissolution with accompanying orders concerning permanent spousal support, the division of community property, the payment of temporary support arrearages through a community property set-off, and attorney fees and costs was entered on April 22, 2008, although the court reserved jurisdiction over two remaining matters. Ralph appeals.

DISCUSSION

I. Delay and Division of Community Property

In a wide-ranging initial argument, Ralph first contends that there was no basis for the dissolution proceedings to take as long as they did and asserts that the trial court should not have failed to "grant[] the trial" until April 22, 2008. We first note that the record shows that the trial took place and was concluded in March 2008 and that the delays appear to be largely, if not completely, attributable to Ralph. Moreover, Ralph has neither demonstrated any legal error by the court in this purported delay nor has he

identified any appropriate remedy for this purported error. Ralph has not raised a cognizable legal argument with this discussion.

Ralph then asserts that this court has the power and the duty of "changing [the] trial court's disposition of community property." He contends that the trial court did not distribute the property equally and unjustly awarded Sandra 80 percent of the community property. Specifically, he complains that the court did not distribute the property equally according to the estimates of value he provided in three documents: a January 2006 schedule of assets and debts; a June 2007 schedule of assets and debts; and a settlement agreement he proposed in July 2007. This argument boils down to a complaint that after a trial in which Ralph declined to provide evidence, Ralph thinks that the court should have based its decisions on the asset valuations and proposed assignments he made months and years earlier.

We are unable to evaluate the merits of any challenge to the division of community property because of deficiencies in the briefing and record on appeal. Ralph has not argued with any specificity how the community property division was unjust beyond his contention that it was an 80-20 split rather than a 50-50 split. Ralph refers to no evidence to support his argument that the division was erroneous other than a citation to the entire judgment and a citation to the three documents that he appears to claim should have been the basis for the division of property. Furthermore, other than citing Family Code[3] section 2550 for the principle that the community property is to be divided equally and some decisions that he claims give this court the power to adjust the court's determination, Ralph provides no authority to support his arguments that the division here was improper and that evidence that he failed to provide at trial should have been used to make the court's ultimate valuations and division. Ralph has therefore forfeited this claim on appeal. (*Levin v. Ligon* (2006) 140 Cal.App.4th 1456, 1486 ["It is not the duty of a reviewing court to search the record for evidence on a point raised by a party whose brief makes no reference to the specific pages where the evidence can be found.

[3] Unless otherwise indicated, all further statutory references are to the Family Code.

[Citation.] Further, other than cite the statutes, Levin provides no authority to support his argument. Thus, this argument . . . is deemed to be without foundation and abandoned"]; *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2002) 100 Cal.App.4th 1066, 1078 ["Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review"]; *Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645, 649-650 [party asserting error must present argument and legal authority on each point raised; appellant bears the burden of overcoming the presumption of correctness].)

Additionally, to the extent that he means to challenge the court's valuations and calculations, Ralph cannot do so because he has failed to provide a record of the trial to this court. We do not have before us any record of the trial testimony or the exhibits introduced into evidence. The party seeking to challenge an order on appeal has the burden to provide an adequate record to assess error. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.) Where a party fails to furnish an adequate record of the challenged proceedings, his claim on appeal must be resolved against him. (*Id.* at pp. 1295-1296.) Additionally, "a record is inadequate, and appellant defaults, if the appellant predicates error only on the part of the record he provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed." (*Uniroyal Chemical Co. v. American Vanguard Corp.* (1988) 203 Cal.App.3d 285, 302.)

II. Spousal Support

"To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.] When a point is asserted without argument and authority for the proposition, 'it is deemed to be without foundation and requires no discussion by the reviewing court.' [Citations.]" (*In re S.C.* (2006) 138 Cal.App.4th 396, 408; see also *Berger v. Godden*

(1985) 163 Cal.App.3d 1113, 1117 ["the failure of appellant to advance any pertinent or intelligible legal argument . . . constitute[s] an abandonment of the [issue on] appeal"].)

Ralph's argument concerning spousal support proceeds as follows: He first sets forth the text of sections 4302, 4320, and 4322 in their entirety. Then he asserts, without citation to the record, "The parties are both dentists and have equal capacities for earnings, without minor children or infirmities and all the factors to be considered under *Family Code* Sect. 4220 [*sic*] are negative." Ralph then offers the text of section 4302 for the second time and also restates it in his own words. Ralph then offers a series of four one-sentence summaries of four decisions: a description of the criteria a trial court considers when making a support order, citing *In re Marriage of Bower* (2002) 96 Cal.App.4th 893; the principle that the purposes of spousal support vary by case, depending on the parties and the facts and circumstances of the case, citing *In re Marriage of Drapeau* (2001) 93 Cal.App.4th 1086; the abuse of discretion standard of review for a spousal support modification, citing *In re Marriage of Tydlaska* (2003) 114 Cal.App.4th 572; and the fact that an order for temporary spousal support is separately and directly appealable, citing *In re Marriage of Murray* (2002) 101 Cal.App.4th 581. This is the entirety of the argument.

"It is the duty of counsel by argument and citation of authority to show in what manner rulings complained of are erroneous. We are not obliged to perform the duty resting on counsel[.]" (*Greenstone v. Claretian Theo. Seminary* (1959) 173 Cal.App.2d 21, 35, disapproved on another ground in *Ellis v. Mihelis* (1963) 60 Cal.2d 206, 221.) We are hard-pressed to find a cognizable legal argument in this passage, which lacks both citations to any evidence and argument as to any specific error allegedly made by the trial court. To the extent that we can divine a specific challenge to the court's support order, it appears that Ralph is contending that (1) the award was in error because there were no minor children, neither spouse had infirmities, and none of the factors for a support award set forth in section 4320 would support an award here; and (2) that the existence of income-producing properties made support inappropriate under section 4302.

The first argument, that the factors in section 4320 do not support a spousal support award, has been forfeited on appeal. First, Ralph has failed to provide any citations to evidence in the record to support the facts he asserts in his brief as militating against a support order. "[A]n appellate court cannot be expected to search through a voluminous record to discover evidence on a point raised by appellant when his brief makes no reference to the pages where the evidence on the point can be found in the record." (*Metzenbaum v. Metzenbaum* (1950) 96 Cal.App.2d 197, 199.) Next, Ralph did not make any meaningful legal argument as to why the support order was erroneous under section 4320. That statute lists 13 specific factors that a court should consider in determining whether to order support and provides that the court may also consider any other factors that the court finds just and equitable. (§ 4320.) Ralph's cursory argument that "all the factors to be considered under *Family Code* Sect. 4220 [*sic*] are negative" is insufficient to affirmatively demonstrate error. "A reviewing court need not consider alleged error when the appellant merely complains of it without pertinent argument." (*Downey Savings & Loan Assn. v. Ohio Casualty Ins. Co.* (1987) 189 Cal.App.3d 1072, 1090.) Finally, here again we cannot review whether the support award was proper because Ralph has failed to provide a complete record of the relevant proceedings and evidence in the trial court. (*Maria P. v. Riles*, *supra*, 43 Cal.3d at pp. 1295-1296; *Uniroyal Chemical Co. v. American Vanguard Corp*., *supra*, 203 Cal.App.3d at p. 302.)

The argument concerning section 4302 is similarly deficient. Section 4302 provides that when parties are living separately by agreement, one is not liable for support of the other unless support is stipulated in the agreement. Ralph has not established how this statute relates to the present facts, nor has he explained how his argument that the purported existence of "equal property that is income producing" has any bearing on the applicability of this statute here. Again, Ralph has failed to develop any legal argument or to support his contentions with any evidence in the record. "We need not address points in appellate briefs that are unsupported by adequate factual or legal analysis." (*Placer County Local Agency Formation Com. v. Nevada County Local Agency Formation Com*. (2006) 135 Cal.App.4th 793, 814.)

III. Contempt Proceedings

Ralph attempts to appeal the contempt judgment against him, claiming that the trial court lacked jurisdiction to find him in contempt because (1) the entire dissolution proceeding had been automatically stayed by his filing of an appeal of the court's temporary support award and (2) he filed a challenge to the court under Code of Civil Procedure section 170.6. Contempt judgments are "final and conclusive" (Code Civ. Proc., § 1222) and are not appealable. (Code Civ. Proc., §§ 904.1, subd. (a)(1), 1222.) The only method for obtaining appellate review of a trial court's judgment or order in a contempt proceeding is a petition for extraordinary writ. (*In re Buckley* (1973) 10 Cal.3d 237, 240, fn. 1; *Davidson v. Superior Court* (1999) 70 Cal.App.4th 514, 522.)

In limited situations, an improper appeal from a judgment or order may be treated as a petition for an extraordinary writ. (*Olson v. Cory* (1983) 35 Cal.3d 390, 400-401.) "A petition to treat a nonappealable order as a writ should only be granted under extraordinary circumstances, '"compelling enough to indicate the propriety of a petition for writ . . . in the first instance . . . ." [Citation.]'" (*Estate of Weber* (1991) 229 Cal.App.3d 22, 25.) The California Supreme Court has held that it was appropriate to treat an appeal from a nonappealable order as a petition for an extraordinary writ where requiring the parties to wait for a final judgment might lead to unnecessary trial proceedings; the briefs and record included in substance the elements necessary for a writ of mandate; there was no indication that the trial court would appear as a party in a writ proceeding; the appealability of the order was not clear; the issues had been thoroughly briefed and argued; and all parties urged the court to decide the issue rather than dismiss the appeal. (*Olson*, at pp. 400-401.)

This case does not present unusual or extraordinary circumstances that persuade us that we should exercise our discretion to treat the improper appeal as a writ petition. Unlike *Olson*, where the appealability of the order was not clear, here the law is very clear that the order in a contempt proceeding is not appealable. (Code Civ. Proc., §§ 904.1, subd. (a)(1); 1222.) Moreover, Ralph has not urged, let alone demonstrated,

circumstances sufficiently compelling as to indicate the propriety of a petition for writ in the first instance. (*Estate of Weber*, *supra*, 229 Cal.App.3d at p. 25.) We cannot imagine how he could show such circumstances: Even if we were to treat this portion of the appeal as a writ petition it would fail because the law does not support Ralph's contention that an appeal of a temporary support order automatically stays the entire matter.

The California Supreme Court has written, "Subject to certain exceptions not relevant here, 'the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order.' ([Code Civ. Proc.,]§ 916, subd. (a).) The purpose of the automatic stay provision of [Code of Civil Procedure] section 916, subdivision (a) 'is to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided. The [automatic stay] prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it.' [Citation.] [¶] To accomplish this purpose, [Code of Civil Procedure] section 916, subdivision (a) stays all further trial court proceedings 'upon the matters embraced' in or 'affected' by the appeal. In determining whether a proceeding is embraced in or affected by the appeal, we must consider the appeal and its possible outcomes in relation to the proceeding and its possible results. '[W]hether a matter is "embraced" in or "affected" by a judgment [or order] within the meaning of [section 916] depends on whether postjudgment [or postorder] proceedings on the matter would have any effect on the "effectiveness" of the appeal.' [Citation.] 'If so, the proceedings are stayed; if not, the proceedings are permitted.' [Citation.]" (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189, footnote omitted.)

Temporary support orders are need-based orders that are meant to preserve the status quo during the dissolution process; they are need based, do not constitute an adjudication of any issues in the litigation, and are independent of any award made in the main dissolution action. (*In re Marriage of Askmo* (2000) 85 Cal.App.4th 1032, 1038.)

Ralph has not demonstrated any way in which proceeding with the main dissolution action would have impacted the effectiveness of an appeal of the temporary support order. Therefore, under *Varian Medical Systems, supra*, 35 Cal.4th 180, and Code of Civil Procedure section 916, subdivision (a), the filing of an appeal of the temporary support order did not stay the dissolution action in its entirety. Nor did the filing of the appeal automatically stay the temporary support order itself, because Ralph failed to post the undertaking set by the trial court. (Code Civ. Proc., § 917.1.)

Ralph's argument that the trial court had no jurisdiction to conduct contempt proceedings due to his motion under section 170.6 is similarly unmeritorious. The record clearly shows that the challenge to the trial court, filed on the same day that the court was set to conduct the contempt trial that had been noticed months earlier, was untimely. (Code Civ. Proc., § 170.6, subd. (a)(2.)

Because the law was clear that the order was nonappealable and because there would be no basis for writ relief here, we decline to exercise our discretion to treat the appeal from the nonappealable order as a writ petition.

DISPOSITION

The judgment is affirmed. Respondent shall recover her costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.